

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3688 OF 2016

Smt. Jayshree Daulatram Kawle .Petitioner

Vs.

Mrs. Lata Rajendra Soni & anr. .Respondents

Mr.Ganesh Gole i/b. Ms Meghna Goyalani,
Advocate, for the Petitioner
Mr.K.Bhate, Advocate, for the Respondent No.1
Mr.S.R.Agarkar, APP, for the Respondent No.2 –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 18.11.2016

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 02.08.2016 passed by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai below Exh.33 and the order dated 31.08.2016 passed by the learned Additional Sessions Judge, Greater Mumbai in Cri.Revn.Appln.No.915 of 2016.

3. The Petitioner is facing a prosecution under Section 138 of the Negotiable Instruments Act. During the course of cross-examination of the Respondent No.1 (Complainant), the Petitioner filed an Application under Section 91 of the Code of Criminal Procedure Code and sought production of certain documents i.e. Books of Account – Cash Book, P & C A/c., Purchase Register, Sales Register, VAT Register, S. Debtors Ledger, Creditor Ledger, All Stock Register, VAT Challans, All Bank Pass Books as ordered in evidence, Invoice Binding Book & Balance Sheet alongwith annexures for Account Years 2013-2014 & 2014-2015 from the Respondent No.1. According to the learned counsel for the Petitioner, the said documents are necessary, considering the evidence that had come on record, in the examination-in-chief of the Respondent No.1 (Complainant) and the discrepancies in the said evidence. He submitted that the said documents are necessary to rebut

the presumption under the Negotiable Instruments Act.

4. Learned counsel for the Respondent No.1 – Complainant opposed the Petition. He submitted that no interference was warranted in the impugned orders.

5. Perused the papers and the impugned orders. The Petitioner has sought several documents in the Application, filed under Section 91 of the Code of Criminal Procedure. There is no material to show the existence of these documents. The Petitioner cannot be permitted to do a fishing inquiry. It is also difficult to accept the Petitioner's contention, that the Petitioner's defence will be based on these documents. There is no infirmity in the impugned orders.

6. Accordingly, the Petition stands rejected.

7. Needless to state, that although there is a presumption under the Negotiable Instruments Act against an accused, the Respondent No.1 (Complainant) will still have to prove his case on the basis of the evidence adduced by him.

(REVATI MOHITE DERE, J.)